

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.443/2016
AND
ORIGINAL APPLICATION NO.605/2016**

DISTRICT: - AURANGABAD

1. ORIGINAL APPLICATION NO.443/2016

Nandkishor Kaniram Rathod,
Age : 34 years, Occu. : Agril.,
R/o. Shivtanda, Tq. Kannad,
Dist. Aurangabad.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra
Through Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) The Sub-Divisional Officer/Magistrate
Kannad, Dist. Aurangabad.
- 3) Motiram s/o. Laxman Jadhav,
Age : 45 years, Occu. : Business,
R/o. Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon,
At post Shivtanda, Tq. Kannad,
Dist. Aurangabad.
- 4) Nitin S/o. Indar Chavan,
Age: 33 years, Occ: Labour,
R/o. Shivtanda, Tq. Kannad,
Dist. Aurangabad.

...RESPONDENTS

=2=

2. ORIGINAL APPLICATION NO.605/2016

Nitin S/o. Indalsing Chavan,
Age: 30 years, Occ: Agriculture/Labour,
R/o. Shivtanda,
Tq. Kannad, Dist. Aurangabad.

...APPLICANT

V E R S U S

1) The State of Maharashtra
Through Secretary,
Home Department,
Mantralaya, Mumbai-400 032.

2) The Collector, Aurangabad.

3) The Sub-Divisional Magistrate,
Su-Division Office, Kannad,
Dist. Aurangabad.

4) Motiram S/o Laxman Jadhav,
Age: 45 years, Occ: Agriculture/Labour,
R/o. Shivtanda Tanda,
Tq. Kannad, Dist. Aurangabad.

...RESPONDENTS

APPEARANCE :Shri Kakasaheb B. Jadhav, learned
Advocate for the Applicant in
O.A.No.443/2016.

:Shri D.K.Rajput, learned Advocate for the
Applicant in O.A.No.605/2016.

:Shri S.K.Shirse, learned Presenting
Officer for the respondent nos. 1 & 2
in O.A.No.443/2016 and for respondent

3...

=3=

nos.1 to 3 in O.A.No.605/2016.

: Shri D.K.Rajput, learned Advocate for
respondent no. 4 in O.A.No.443/2016.

:Shri Masood C. Syed, learned Advocate for
respondent no.3 in O.A. No.443/2016 and
respondent no.4 in O.A.No.605/2016.

CORAM : Hon'ble Shri B.P.Patil, Member (J)

DATE : 27th July 2017

COMMON JUDGMENT
[Delivered on 27th day of July 2017]

The facts and issues involved in both the O.As. are similar and identical, and therefore, same are decided by common order.

2. Applicants have challenged decision of respondent no.2 Sub-Divisional Magistrate Kannad selecting respondent no.3 Motiram Laxman Jadhav as Police Patil of Village Shivtanda by filing these O.As.

4...

=4=

3. Respondent no.2 published an advertisement on 23-01-2016 for filling up posts of Police Patil of different villages in Kannad Sub-Division and invited applications of the eligible candidates. It was mentioned in the advertisement that the candidates should be resident of the village where they will be appointed on the post of Police Patil. Accordingly, applicants and respondent nos.3 & 4 in O.As. filed their applications. They appeared for written examination conducted on 28-02-2016. In the written examination, the applicant in O.A.No.443/2016 viz. Nandkishor Kaniram Rathod secured 49 marks, respondent no.3 Motiram Laxman Jadhav (who is respondent no.4 in O.A.No.605/2016)) has secured 47 marks and respondent no.4 Nitin Chavan has secured 54 marks. They were called for oral interviews. Committee headed by respondent no.2 Sub-Divisional Magistrate, Kannad conducted oral interviews. They had given 9 marks to the applicant, 15 marks to the respondent no.3 Motiram Jadhav and 8 marks to the respondent no.4 Nitin Chavan (applicant in O.A.No.606/2016). Applicant in O.A.No.443/2016, namely,

5...

=5=

Shri Nandkishor Rathod secured 58 marks in aggregate while respondent no.3 Motiram Jadhav and respondent no.4 (applicant in O.A.No.605/2016) Nitin Chavan secured 62 marks each. It is contention of the applicant in O.A.No.443/2016 that respondent no.2 i.e. Sub-Divisional Magistrate has intentionally awarded less marks to him and more marks to the respondent nos.3 and 4. It is contention of the applicants that the respondent no.3 Motiram and respondent no.4 Nitin secured equal marks but the respondent no.3 Motiram Jadhav has been declared as selected candidate as his age was more than the respondent no.4 who is applicant in O.A.No.605/2016 Nitin Chavan. It is contention of the applicants that there was no transparency in the oral interviews conducted by the Sub-Divisional Magistrate as head of the committee and by adopting malpractice they had given more marks to the respondent no.3 Motiram Jadhav.

4. It is contention of the applicants that they raised grievance before the Sub Divisional Magistrate Kannad in that regard but he has not considered their representations

6...

=6=

properly and declared respondent no.3 in O.A.No.443/2016 viz. Motiram Jadhav as selected candidate for the post of Police Patil of Village Shivtanda. It is further contention of the applicant Nandkishor Rathod that the selected candidate Motiram Jadhav is a permanent resident of Adityanagar, Patnadevi Road, Chalisgaon, Tq. Chalisgaon, Dist. Jalgaon. He is running a medical shop there and residing at Chalisgaon, Tq. Chalisgaon, Dist. Jalgaon since 20 years. As he is not a permanent resident of village Shivtanda, he is not eligible for the post of Police Patil of village Shivtanda. Not only this, at present he has crossed the maximum age limit prescribed for the appointment of Police Patil. Therefore, he is not eligible for the appointment on the post of Police Patil.

5. It is contention of the applicant in O.A.No.443/2016 that respondent no.4 Nitin Chavan is an active member of political party, viz. Banjara Kranti Dal and he is youth president of Nashik District. Therefore, he is not eligible to

7...

=7=

be appointed as Police Patil of village Shivtanda. It is further contention of the applicant in O.A.No.443/2016 that respondent no.3 Motiram Jadhav is having 3 living children. Therefore, he is not entitled to be appointed as Police Patil. It contention of the applicant Nandkishor that he raised objections before Sub-Divisional Magistrate but he Sub-Divisional Magistrate has not considered said objections in proper perspective and rejected the applications filed by him and declared Motiram Jadhav-respondent no.4 as selected candidate for the post of Police Patil of village Shivtanda, Tq. Kannad, Dist. Aurangabad. Therefore, they have challenged selection of Motiram Jadhav as Police Patil of Village Shivtanda, Tq. Kannad by filing these O.As. Applicants have prayed to quash the decision of the respondent no.2 Sub-Divisional Magistrate to that effect by allowing the O.As.

6. Respondent no.2 Sub-Divisional Magistrate Kannad filed affidavit in reply and resisted contentions of both the applicants. He has denied that oral interview has not been

8...

=8=

conducted as per the guidelines and it was not transparent. He has denied that the objections raised by the applicants have not been decided properly and he and the members of the committee favoured selected candidate Motiram Jadhav, intentionally. It is his contention that recruitment process of Police Patil of Village Shivtanda has been conducted as per the recruitment rules and as per the terms and conditions mentioned in the advertisement. The committee headed by him conducted oral interview of both the applicants and selected candidate Motiram Jadhav. Committee members evaluated their performance, talent, general knowledge and local activities' knowledge and accordingly allotted marks to them. Respondent no.3 in O.A.No.443/2016 viz. Motiram Jadhav as well as applicant in O.A.No.605/2016 Nitin Chavan secured highest marks i.e. 62 marks in aggregate (in written and oral examination). Therefore, selection for the post of Police Patil has been made as per the criteria given in clause No.5.4 in G.R. dated 22-08-2014. Both the candidates i.e. Nitin Chavan and Motiram Jadhav were not falling under criteria

=9=

mentioned in clause No.5.1 to 5.3, and therefore, criteria of age as mentioned in clause No.5.4 had been considered. Respondent no.3 Motiram Jadhav is eldest in age amongst him and Nitin, and therefore, he was declared as selected candidate for the post of Police Patil of Village Shivtanda.

7. It is contention of the respondent no.2 Sub Divisional Magistrate Kannad that he has decided objections raised by the applicants in both the O.As. Applicants have not raised issues regarding non-compliance of Maharashtra Civil Services (Small Family) Rules during the recruitment process, therefore, that issue was not considered at that time. It is his contention that there was no illegality in the recruitment process conducted by him. Therefore, he prayed to reject the O.As.

8. It is his further contention that he considered documents produced by the applicant in O.A.No.443/2016 as well as respondent no.3 Motiram Jadhav as regards objections regarding residence of Motiram Jadhav and on considering the heir-ship certificate issued by the Gram

=10=

Panchayat Saygavan, Voter I.D. card, Ration Card, Namuna 8 in the name of Motiram, 7/12 extract and other documents rejected the application of the applicant in O.A.No.443/2016 by recording reasons. It is his contention that there is no illegality or irregularity in the recruitment process. Therefore, he prayed to reject the O.As.

9. Applicant in O.A.No.605/2016 who is the respondent no.4 in O.A.No.443/2016 has filed reply raising similar contentions to that of the contentions to that of the contentions raised by him in his O.A.No.605/2016.

10. I have heard Shri Kakasaheb B. Jadhav, learned Advocate for the Applicant in O.A.No.443/2016, Shri D.K.Rajput, learned Advocate for the Applicant in O.A.No.605/2016 and respondent no.4 in O.A.No.443/2016, Shri S.K.Shirse, learned Presenting Officer for the respondent nos. 1 & 2 in O.A.No.443/2016 and for respondent nos.1 to 3 in O.A.No.605/2016, Shri Masood C. Syed, learned Advocate for respondent no.3 in O.A. No.443/2016 and respondent no.4

=11=

in O.A.No.605/2016.

11. Learned Advocates of the applicants have submitted that recruitment process has not been conducted by the Sub Divisional Magistrate as per guidelines and recruitment rules, and therefore, selection of the respondent no.3 Motiram Jadhav made by the Sub Divisional Magistrate Kannad is not legal and proper. Learned Advocate for the applicant in O.A.NO.443/2016 has submitted that applicant Nandkishor Rathod secured 49 marks while respondent no.3 Motiram Jadhav Secured 47 marks and the respondent no.4 Nitin Chavan secured 54 marks in the written examination. They were called for oral interviews. He has further argued that in the oral interview, Sub Divisional Magistrate and members of the committee had intentionally gave the applicant Nandkishor less marks and more marks to respondent no.3 Motiram Jadhav. He has submitted that the applicant secured 9 marks in the oral interview while Motiram Jadhav secured 15 marks and Nitin Chavan secured 8 marks in the oral

12...

=12=

interview. He has submitted that the applicant secured 58 marks in aggregate while respondent no.3 Motiram Jadhav and respondent no.4 Nitin Chavan secured 62 marks each in aggregate.

12. Learned Advocates for the applicants in both the O.As. have submitted that evaluation of the performance of the applicants in oral interview had not been made correctly and the members of the committee favoured selected candidate Motiram Jadhav. They gave more marks to him in oral interview. Learned Advocates of the applicants have further submitted that the selected candidate Motiram Jadhav is resident of Chalisgaon, Tq. Chalisgaon, District Jalgaon. He is residing there since 20 years and is also running medical shop at Chalisgaon and he is not a resident of Village Shivtanda. They raised objection in that regard before Sub Divisional Magistrate and produced copy of the certificate issued by the Talathi, Chalisgaon (page 22) showing that he is resident of Chalisgaon but the said objection has not been considered by the respondent no.2

13...

=13=

Sub Divisional Magistrate, Kannad properly and he has rejected their objections. They have submitted that there are irregularities in recruitment process, and therefore, they prayed to quash selection of the respondent no.3 Motiram Jadhav, on the post of Police Patil of Village Shivtanda.

13. They have further submitted that respondent no.3 Motiram Jadhav has completed 45 years of his age, and therefore, he is not eligible to be appointed as Police Patil. They have further submitted that respondent no.3 is having 2 daughters and a son, which is against the provisions of Maharashtra Civil Services (Small Family) Rules, and therefore, respondent no.3 Motiram is not eligible to be appointed as Police Patil of Village Shivtanda.

14. Shri Masood C. Syed learned Advocate for the respondent no.3 Motiram Jadhav has submitted that the age of the candidate has to be considered as on 25-01-2016 as mentioned in advertisement and not on the date of appointment. He has submitted that the respondent no.3 Motiram had fulfilled age criteria as on 25-01-2016.

14...

=14=

Therefore, his appointment as Police Patil is legal. In support of his submission, he has placed reliance on the judgment of Hon'ble Gujarat High Court in the case of **Popatbhai Ramjibhai Moghariya V/s. District Judge and Ors.** reported in [(1993) 2 GLR 1539].

15. To this, leaned P.O. and learned Advocate for respondent no.3 Motiram Jadhav have replied that entire recruitment process had been conducted by the committee headed by Sub Divisional Magistrate as per recruitment rules and there was no irregularity in it. They have submitted that both the applicants and Motiram Jadhav had been called for oral interview as they secured highest marks in the written examination. Their performance had been assessed by the members of the committee headed by Sub Divisional Magistrate considering their confidence level, presence of mind, depth of answer given by candidates, knowledge, general knowledge, promptness, personality etc. and accordingly they allotted marks to each of them. On considering the marks secured by both the

15...

=15=

applicants and respondent no.3 Motiram Jadhav in written and oral interview, it reveals that the applicant in O.A.No.443/2016 secured 58 marks in aggregate respondent no.3 Motiram Jadhav and Nitin Chavan secured 62 marks each in aggregate. They have submitted that as Motiram and Nitin secured equal marks, guidelines given in G.R. dated 22-08-2014 have been considered. In clause no.5 of the said G.R., several criteria are given for selection of the candidates when two or more candidates secure equal marks. Both Motiram and Nitin were not falling under the criteria mentioned in clause no. 5.1 to 5.3, and therefore, the last criteria i.e. clause no.5.4 was applied in this case. As per the said criterion, candidate elder in age has to be selected on the post. Respondent no.3 Motiram was elder than Nitin. Therefore, he was declared as selected candidate.

16. They have submitted that the Sub Divisional Magistrate has considered the objections raised by the applicant Nandkishor Rathod as regards residence of

=16=

respondent no.3 Motiram Jadhav. Opportunity of hearing had been given to all the concerned. On considering the documents produced by the parties, Sub Divisional Magistrate has decided that Motiram Jadhav is resident of Village Shivtanda, Tq. Kannad, Dist. Aurangabad, and accordingly, he rejected objection of the applicant Nandkishor. He has submitted that Motiram Jadhav has produced several documents i.e. residence certificate issued by the Gram Panchayat Saygavan as well as Tahsildar, Kannad, 7/12 extract showing landed property of Motiram Laxman Jadhav situated at Village Shivtanda, heir-ship certificate issued by Group Gram Panchayat Saygavan, Voter I.D. Card, ration card in the name of Motiram Jadhav of Village Shivtanda, Namuna 8 issued by Group Gram Panchayat Saygavan and on the basis of said documents decision has been taken by respondent no.2. Therefore, they supported decision of respondent no.2 Sub Divisional Magistrate.

17. Learned P.O. has submitted that none of the

17...

=17=

applicants in both the O.As. raised issue regarding breach of provisions of Maharashtra Civil Services (Small Family) Rules by Motiram Jadhav before the Sub Divisional Magistrate as well as his over-age, and therefore, those aspects were not considered by Sub Divisional Magistrate, Kannad. He has submitted that the applicants are raising these issues for the first time before the Tribunal without raising objection before the Sub Divisional Magistrate, and therefore, the same cannot be allowed to be raised in this O.As. Therefore, respondent authorities have prayed to reject the O.As.

18. On going through the documents on record, it is crystal clear that after considering the marks secured by the candidates in the written examination, committee headed by respondent no.2, called applicants in both the O.As. and Motiram Jadhav for oral interview as they secured highest marks amongst the candidates appeared for the written examination. They appeared for oral interview conducted by the committee headed by Sub

18...

=18=

Divisional Magistrate Kannad. Members of the committee assessed confidence level, presence of mind, depth of answer given by candidates, knowledge, general knowledge, promptness, personality etc. and allotted marks to each of the candidates. There is nothing on the record to show that the members of the committee favoured respondent no.3 Motiram Jadhav and gave more marks to him. In the absence of substantial evidence, contention of the applicants in that regard is not acceptable. Therefore, I do not find any substance in the contentions of the applicants in that regard.

19. On considering the marks secured by the candidates in the written and oral examination, it reveals that the applicant Nandkishor secured 58 marks in aggregate while respondent no.3 Motiram Jadhav and Nitin secured 62 marks each in aggregate. As respondent no.3 Motiram Jadhav and respondent no.4 Nitin Chavan secured equal marks, criteria as provided in G.R. dated 22-08-2014 had been applied. Criteria mentioned in clause no.5.4 had been

=19=

applied as both the candidates were not falling under the criteria mentioned in clause no.5.1 to 5.3. Motiram Jadhav is the eldest amongst Nitin Chavan and him, and therefore he was declared as selected candidate. In these circumstances, in my opinion, there is no substance in the contentions of the applicants that, recruitment process was not carried out as per the rules. The respondent no.2 Sub Divisional Magistrate has followed the recruitment rules and guidelines in G.R. while conducting the recruitment process.

20. Applicants raised objections before the Sub Divisional Magistrate that Motiram Jadhav was not resident of Village Shivtanda and he is permanent resident of Chalisgaon. In support of his contention, applicant Nandkishor Rathod produced a single document i.e. certificate issued by the Talathi, Chalisgaon showing that Motiram Jadhav is resident of Chalisgaon. As against this, Motiram Jadhav produced various documents including residence certificate issued by the Gram Panchayat Saygavan as well as

20...

=20=

Tahsildar, Kannad, 7/12 extract showing landed property of Motiram Laxman Jadhav situated at Village Shivtanda, heir-ship certificate issued by Group Gram Panchayat Saygavan, Voter I.D. Card, ration card in the name of Motiram Jadhav of Village Shivtanda and Namuna 8 issued by Group Gram Panchayat Saygavan. Sub Divisional Magistrate has considered all the documents produced by both parties and then passed the reasoned order on 22-06-2016 and rejected the objections of the applicants. Said order is at page 76 in O.A.No.443/2016. There is no irregularity or illegality in the said order. Therefore, in my opinion, no interference is called for in the said order.

21. Applicants have raised grievance before this Tribunal that Motiram Jadhav has completed 45 years of age and therefore, he is not eligible to be appointed as Police Patil of Village Shivtanda. They have further submitted that his family is not a small family as provided in Maharashtra Civil Services (Small Family) Rules as he is having 3 children. Therefore, he is not eligible to be appointed as

21...

=21=

Police Patil. But the said grievance has not been raised by the applicants before Sub Divisional Magistrate who is the competent authority to consider and decide the grievance of the applicants in that regard. Instead of approaching the respondent no.2 Sub Divisional Magistrate, they have raised grievance before this Tribunal. Without availing appropriate remedy available to them, they approached this Tribunal. Therefore, their objections cannot be considered. It is open for them to approach the Sub Divisional Magistrate and raise grievance in that regard challenging selection of the respondent no.3 Motiram Jadhav, if they desire. Therefore, grievance of the applicants in that regard cannot be considered in these O.As. at this juncture. Therefore, there is no need to enter into that arena.

22. Considering the above discussion, there is no illegality or irregularity in the recruitment process conducted by the Sub Divisional Magistrate and declaring that respondent no.3 Motiram Jadhav as selected candidate for the post of Police Patil of Village Shivtanda. There is no merit in the O.As. Therefore, both the O.As. deserve to be dismissed.

22...

=22=

23. In view of the above discussion, O.A.Nos.443/2016 and 605/2016/2016 are dismissed with no order as to costs.

(B. P. Patil)
MEMBER (J)

Place : Aurangabad
Date : 27-07-2017.